

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

SILVIO MCKENZIE-GAINZA,
Petitioner,
v.
FCI MENDOTA WARDEN,
Respondent.

No. 1:23-cv-0187 JLT SAB (HC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS, GRANTING
RESPONDENT'S MOTION TO DISMISS,
DISMISSING PETITION FOR WRIT OF
HABEAS CORPUS, AND DIRECTING
CLERK OF COURT TO CLOSE CASE

(Docs. 10, 12)

Silvio McKenzie-Gainza is a federal prisoner proceeding *pro se* with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. Petitioner asserts the Bureau of Prisons failed to apply Petitioner's earned time credits properly under the First Step Act. (Doc. 1 at 6.)

Respondent moved to dismiss, asserting there is no case or controversy because Petitioner credits have been applied, which resulted in an advanced release date from BOP custody. (Doc. 10 at 3.)

The assigned magistrate judge found, "the record establishes Petitioner is eligible to apply [time credits], which has resulted in an advanced projected release date of February 1, 2027, when 365 days of FSA credits are applied." (Doc. 12 at 2.) As a result, the magistrate judge determined that "Petitioner has received the remedy he requested in his petition," and agreed that "no case or controversy exists." (*Id.*) Accordingly, the magistrate judge recommended the motion to dismiss be granted and the petition be dismissed as moot. (*Id.*)

The Court served the Findings and Recommendations on Petitioner and notified him that

1 any objections were due within 30 days. (Doc. 12 at 2.) The Court also informed the parties that
2 “failure to file objections within the specified time may waive the right to appeal the District
3 Court’s order.” (*Id.* at 3, citing *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014), *Baxter*
4 *v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991).) Petitioner did not file objections, and the time
5 to do has expired.

6 According to 28 U.S.C. § 636(b)(1)(C), the Court conducted a *de novo* review of the case.
7 Having carefully reviewed the entire file, the Court concludes the Findings and
8 Recommendations are supported by the record and proper analysis. Thus, the Court **ORDERS**:

- 9 1. The findings and recommendations issued on July 25, 2023 (Doc. 12) are
10 **ADOPTED** in full.
- 11 2. Respondent’s motion to dismiss (Doc. 10) is **GRANTED**.
- 12 3. The petition for writ of habeas corpus is **DISMISSED**.
- 13 4. The Clerk of Court is directed to close this case.

14
15 IT IS SO ORDERED.

16 Dated: **September 20, 2023**


UNITED STATES DISTRICT JUDGE